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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 SAMUEL DAVID SCHMITTLER,

9 Petitioner,

10 v.

11 JEFFREY A. UTTECHT,

12 Respondent.

CASE NO. C19-5371 BHS

ORDER ADOPTING REPORT
AND RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”)
14 of the Honorable J. Richard Creatura, United States Magistrate Judge, Dkt. 16, and
15 Petitioner Samuel Schmittler’s (“Schmittler”) objections to the R&R, Dkt. 17.

16 On July 29, 2019, Judge Creatura issued the R&R recommending that the Court
17 dismiss Schmittler’s petition without prejudice for failure to exhaust. Dkt. 16. On
18 August 15, 2019, Schmittler filed objections. Dkt. 17.

19 The district judge must determine de novo any part of the magistrate judge’s
20 disposition that has been properly objected to. The district judge may accept, reject, or
21 modify the recommended disposition; receive further evidence; or return the matter to the
22 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

1 In this case, Schmittler contests the well-settled and binding precedent that he
2 must exhaust his state court remedies before seeking relief in a federal habeas petition.
3 Dkt. 17. Schmittler's argument do not persuade the Court to carve out an exception to
4 "one of the pillars of federal habeas corpus jurisprudence." *Calderon v. U.S. Dist. Court*
5 *for N. Dist. of California*, 134 F.3d 981, 984 (9th Cir. 1998). Therefore, the Court having
6 considered the R&R, Schmittler's objections, and the remaining record, does hereby find
7 and order as follows:

- 8 (1) The R&R is **ADOPTED**;
- 9 (2) Schmittler's petition is **DISMISSED without prejudice**;
- 10 (3) A Certificate of Appealability is **DENIED**; and
- 11 (4) The Clerk shall enter a JUDGMENT and close the case.

12 Dated this 7th day of October, 2019.

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15 BENJAMIN H. SETTLE
16 United States District Judge
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